In the Supreme Court of the United States

OCTOBER TERM, 1960

No. 272

SQUEEZ-A-PURSE CORPORATION

Petitioner,

vs.

BENJAMIN STILLER et al.

Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

REPLY BRIEF FOR PETITIONER.

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At two places in their brief in opposition to this petition for a writ of certiorari, respondents made a number of indefensible assertions. At page 6, the following appears:

> "Moreover, the fact that the Court found (161a) that the elements 'F' and 'G' constitute 'one of the prime novelties of the article' is no admission by the Court that all the preceding elements are old. Most certainly there is no 'finding' by the District Court that all such elements 'A' to 'E' are 'old.' Likewise, there is no admission either by Respondents' Counsel or by Respondents' Expert Witness that elements 'F' and 'G' are 'old.' "

at page 12, respondents' brief contains the following:

> "It is again reiterated and emphasized that there is no 'finding' of the Court that the elements A through E inclusive of claim 3 are old."

These statements were made to this Court by the respondents in the brief filed on or about August 24, 1960, *in the face of a final Judgment entered by the District Court on August 17, 1960, which flatly and directly contradicts the quoted assertions.** That respondents did so merely emphasizes the necessity for a full-scale review by this Court of the proceedings below.

The entire final Judgment of August 17, 1960 appears as Appendix C hereto, but the second paragraph thereof, most pertinent to the situation raised by respondents' quoted assertions, follows:

> "2. The plaintiff's complaint** is sustained as to claims 1, 2, 4 and 8 of the said patent on the ground of the invalidity thereof and as to claims 6 and 7 on the ground of the non-infringement thereof; otherwise the complaint is dismissed."

Every one of claims 1, 2, 4 and 8 contains elements "A" through "E" (with claims 2 and 4 variously adding elements "H" through "J"). Yet, the District Court finally** held these four claims to be invalid, obviously because it found (and so stated in its memorandum opinion) that all of these elements were old in the art. Thus, even if respondents did challenge and dispute the age of these elements "A" through "E" and "H" through "J", the District Court's final judgment of invalidity of these claims negates the accuracy—and indeed the propriety—of the quoted assertions made to this Court by respondent.

Going even further, respondents in these quotations deny admissions made by their counsel and by their ex-

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* Emphasis applied throughout.

** In the final Judgment, the District Court for the first time made formal disposition of any issues but that on Claim No. 3. In the original memorandum opinion, the Court failed to consider any claim but No. 3, and admitted the ineptness in its original opinion. The Circuit Court, in adopting the District Court's opinion in toto, committed the same ineptness.

pert witness. On the expert witness aspect of the denials, the Court's attention is directed to the following series of cross-questions and answers by Mr. Hoover, the expert, appearing at 93a, 94a of petitioner-appellant's appendix:

"Q. So that we then have in Nelson the enlarged openings near the ends of that container with a slit communicating with those enlarged openings?

* * * * *

A. That's right.

Q. Now, isn't that one of the purposes of the openings at the ends of the Stiller container? A. There are three stated functions of that hole in Stiller, and that ease of opening is one of them, so stated.

Q. Now, wouldn't the fact that you had that transverse slit, wouldn't that perform the function of the openings in Stiller, whether designedly or not? A. I think so. Let me check just a minute. I have forgotten. Yes, I would say so.

Q. Now, wouldn't the same thing be true of the openings in the end of the Butler container, whether designedly or not, the fact that they do have these openings communicating (171) with the slit? A. I would say so, yes."

The original memorandum opinion of the District Court, at 161a, establishes that element "F" constitutes the oppositely disposed through openings of the first of these questions, and that element "G" constituted the communication between the lengthwise-extending slit and the apertures of the same question. At 93a, folio 169, Mr. Hoover, the expert witness, admitted the presence of the *structure* of elements "F" and "G" in the Nelson prior patent and in his answer to the second of the questions above-quoted he admitted anticipation by Nelson of the *functional or operational* results of the elements. At 90a, folio 162, the witness Mr. Hoover admitted the presence in the Butler prior patent of the *structure* of elements "F" and

"G," and in his answer to the last of the above-quoted questions he admitted the *functional or operational* identity of these elements in the Butler patent to the same old elements in the Stiller patent in suit.

While the fact that the District Court overlooked or ignored the presence and import of these admissions is ground calling for review by this Court, it is inconceivable that respondents' counsel should deny the very existence of these admissions in this record. It is even less understandable that respondents' counsel now deny, as they do in the quotation from page 6 of their brief, their own admission before the Circuit Court of Appeals that elements "F" and "G" were old *at least in the Butler patent*. The admission clearly appears on their chart of the elements of the patent in suit as related to the disclosures of the prior art placed opposite page 26 of their brief to the Circuit Court (the chart is appended hereto as Appendix D). It is to be noted, moreover, that at page 16 of their brief to this Court, respondents admit that this same Butler patent was not recited nor analyzed by the District Court in its memorandum opinion.

In the face of this factual situation, the questions propounded to this Court by petitioner clearly arise directly and unmistakably from the present case or controversy. On the first question, the Circuit Court could not have adopted the opinion of the District Court as its own unless—in the face of the fact that *all* the elements of the claims in suit were old—it followed a standard of invention greatly relaxed from that of *A. & P.*, and the existence of conflict of interpretation between the Sixth (and Second) Circuit and the other Circuits is thus clear in calling for an interpretation by this Court, for the first time, of Section 103.

Respondents seek to avoid the second question propounded by the petition by claiming the presence or ex-

istence of new elements as F and G. *There are no new elements*, as is made clear above, as a matter of admitted or established fact, and that *A. & P.* was not followed calls for correction of and direction to the Court of Appeals for the Sixth Circuit by this Court.

On the third question, respondents' brief goes even further afield from the record. Had the District Court not relied on plaintiff's failure to prove, affirmatively, the commercial success of the prior art, it would not have made the third request for briefing of the law set forth at 160a, nor would it have made no less than *four* references to the lack of affirmative proof of the prior art's commercial success (two at 160a and two at 162a) in its memorandum opinion. The District Court actually "deemed" it unnecessary to "analyze and point out" the supposed failings of the prior art *for this very reason* (160a).

It is submitted, therefore, that there is no tenable or supportable opposition to the grant of the writ sought by the petitioner, and it should be granted.

Respectfully submitted,

ROBERT I. DENNISON,

Attorney for Petitioner.

WILLIAM R. LIBERMAN,

Of Counsel.

APPENDIX C.

JUDGMENT OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, EASTERN DIVISION.

(Filed Aug. 18, 1960.)

JONES, *J.*:

It now appearing that the United States Court of Appeals for the Sixth Circuit by its mandate filed herein June 9, 1960, relative to the order of this Court entered on May 27, 1959, affirmed the judgment of the District Court with directions for further proceedings in accordance with the mandate, it is hereby:

ORDERED, ADJUDGED and DECREED, that:

1. This Court has jurisdiction of the parties and of the causes of action involving U. S. Reissue Letters Patent No. 24,166.

2. The plaintiff's complaint is sustained as to claims 1, 2, 4 and 8 of the said patent on the ground of the invalidity thereof and as to claims 6 and 7 on the ground of the non-infringement thereof; otherwise the complaint is dismissed.

3. Defendant, Benjamin Stiller, was, on May 27, 1959, the sole owner of the legal title to U. S. Reissue Patent No. 24,166, dated June 12, 1956, and the defendant, Benjamin Stiller, was, on May 27, 1959, the sole owner of the legal title to U. S. original Letters Patent No. 2,667,906, dated February 2, 1954, on which said Reissue Patent No. 24,166 was based.

4. Said Reissue Letters Patent No. 24,166 of the United States is good and valid at law as to claims 3 and 5 thereof which constitute invention.

5. Plaintiff Squeez-A-Purse Corporation has infringed claims 3 and 5 of said Reissue Letters Patent No. 24,166 by the manufacture and sale of coin purses as Plaintiff's Ex-

hibit No. 20 prior to the filing of the complaint in this action and since the filing of the said complaint.

6. Said Reissue Letters Patent No. 24,166 was validly issued upon the surrender of original Patent No. 2,667,906, and the Oath supporting the Reissue Patent is legally sufficient.

7. Defendants are not guilty of unfair competition with the plaintiff.

8. Defendant, Benjamin Stiller, shall recover from plaintiff, Squeez-A-Purse Corporation the sum of Forty-seven Thousand ($47,000.00) Dollars as damages suffered by the defendant, Benjamin Stiller by virtue of the infringement of said Letters Patent.

9. Defendant, Benjamin Stiller, shall recover from plaintiff, Squeez-A-Purse Corporation, the amount of the defendant's costs in this action.

10. An injunction shall issue under the seal of this Court enjoining plaintiff, Squeez-A-Purse Corporation, its officers, agents, and those in privy with it, and enjoining Nathan Silverman, his agents, and those in privy with him, from infringing said United States Reissue Patent No. 24,166, by the manufacture or sale of coin purses embodying the invention of said Reissue Patent No. 24,166, and particularly embodying the construction of coin purses having the construction of a purse identified as Plaintiff's Exhibit 20 herein.

11. The mandate of the United States Court of Appeals for the Sixth Circuit dated June 8, 1960, and affirming the opinion filed by this Court herein on May 27, 1959, shall constitute the findings and conclusions of this Court as provided in Rule 52(a) of the Federal Rules of Civil Procedure.

12. The restraining order entered by this Court on January 23, 1957, restraining Benjamin Stiller from prosecuting Civil Action No. 1062, pending in the United States District Court for the Middle District of North Carolina at Greensboro is hereby dissolved.

13. In the event that the judgment amount above set forth in paragraph 8 is not paid to defendant, Benjamin Stiller, in full within sixty days from the date of entry of this order, then and in that event, the plaintiff, Squeez-A-Purse Corporation is hereby adjudged as having failed to satisfy the judgment of this Court and in such event the Surety on the bond approved July 2, 1959, is ordered to immediately pay the defendant, Benjamin Stiller, the sum of Fifteen Thousand ($15,000.00) Dollars.

14. It is further ordered that in the event that this judgment is not satisfied in full within sixty days following entry of this order, that then and in that event, the Clerk of this Court shall make disbursement to the Defendant, Benjamin Stiller, of the moneys collected under the order of July 2, 1959, in the approximate amount of Fourteen Thousand Two Hundred Seventy-two Dollars and Thirty-eight cents ($14,272.38).

JONES,

United States District Judge.

August 17, 1960.

CHART I.

CLAIMS 1-5

A quick opening and self-closing container for articles, comprising:

A. A unitary envelope of material having elastic properties similar to those of soft rubber.

B. Said envelope defining a substantially fully closed interior volume.

C. Said envelope ". . . having a depth relatively small in comparison to dimensions transverse to its depth."

D. Said envelope having a substantially transverse normally closed slit in one face.

E. Said slit in said face ". . . extending from one periphery to an opposite periphery."

F. Said envelope having oppositely disposed through apertures.

G. The respective ends of said slit communicating with respective apertures.

H. The face bearing the slit being arched.

I. The envelope being elliptical in plan.

J. The top region of said arched side having a curvature of less magnitude than the balance of said arched side.

K. The slit face being substantially flat in the region of the slit.

PRIOR ART REFERENCES

Present In Claims	Booker (117a)	Hurlbut (121a)	Richardson (125a)	Meier (129a, 137a)	Butler (133a)	Nelson (145a)
1, 2, 3, 4, 5	Disputed	Disputed	Yes	Disputed	Yes	Yes
1, 2, 3, 4, 5	Yes	Yes	Yes	Yes	Disputed	Disputed
1, 2, 3, 4, 5	Disputed	No	No	Yes	No	Disputed
1, 2, 3, 4, 5	Disputed	Disputed	Disputed	Disputed	Disputed	Disputed
1, 2, 3, 4, 5	Disputed	Disputed	Disputed	Disputed	Disputed	Disputed
3, 5	No	No	No	No	**YES**	Disputed
3, 5	No	No	No	No	**YES**	Disputed
2, 4	Disputed	Disputed	Yes	Disputed	No	Disputed
4	Yes	No	No	Yes	No	No
4	No	No	No	Disputed	Disputed	No
5	No	No	No	Disputed	Disputed	No

In reading this chart "Disputed" means that the testimony was conflicting. "Yes" means that the element was admittedly present in the prior art. "No" means that the element is admittedly not present in the prior art (see chart p. 22 appellant's brief).